

**Letter of Findings: 01-20191574N
Individual Income Tax
For Tax Year 2013**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual established that he was not domiciled in Indiana in tax year 2013 but had effectively abandoned his Indiana domicile as determined in a prior Department Letter of Findings.

ISSUE

I. Individual Income Tax - Residency.

Authority: IC § 6-8.1-5-1; IC § 6-3-2-1; IC § 6-3-1-12; *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Letter of Findings 01-20150042.

Taxpayer protests the imposition of Indiana individual income tax for the 2013 tax year.

STATEMENT OF FACTS

Taxpayer did not file a 2013 Indiana income tax return. The Indiana Department of Revenue ("Department") determined that Taxpayer had claimed the homestead deduction on his Indiana property and thus concluded that Taxpayer was an Indiana resident who should have filed an Indiana income tax return and paid any tax due for the tax year at issue. The Department thus issued a tax assessment for Taxpayer for 2013. Taxpayer protested and provided additional documentation supporting his protest. This Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Residency.

DISCUSSION

The Department determined that Taxpayer was an Indiana resident during 2013 because he took the homestead deduction on his Indiana property. The Department therefore concluded that Taxpayer was domiciled in Indiana in 2013, and his income was subject to Indiana income tax. As such, the Department issued Taxpayer a proposed assessment of income tax.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, shall be entitled to deference.

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted

gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). Pursuant to IC § 6-3-1-12, a resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state. . . ."

In 2015, the Department assessed Taxpayer with individual income tax for tax year 2011. Taxpayer protested at that time and a Letter of Findings was issued sustaining Taxpayer. In that Letter of Findings, it was determined that in 2006, Taxpayer "undertook numerous acts to evidence his intention to abandon his Indiana domicile and to establish a new domicile in [another] jurisdiction." Letter of Findings 01-20150042, 20151125 Ind. Reg. 045150389NRA. In 2006, Taxpayer moved outside of Indiana and put his Indiana home up for sale. The home did not sell and Taxpayer hired a property manager to maintain the home. As of the date of this Letter of Findings, Taxpayer has not returned to Indiana. In fact, Taxpayer has moved again to another jurisdiction outside Indiana. Taxpayer's Indiana property is under contract for sale and Taxpayer has removed the homestead deduction. Though Taxpayer did not remove the homestead deduction until 2019, the removal is confirmation of what the Department determined in its 2015 Letter of Findings; that Taxpayer abandoned his domicile in Indiana in 2006. Claiming a homestead deduction on Indiana property alone is not enough to create domicile in Indiana. Taxpayer is sustained.

FINDING

Taxpayer's protest is sustained.

January 22, 2020

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